IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

MAUREEN RICHARDS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 03-106-SLR
	)	
THE CITY OF WILMINGTON,	)	
	)	
Defendant.	)	

Tiffany Quell Friedman, Esquire, Wilmington, Delaware. Counsel for Plaintiff.

Rosamaria Tassone, Esquire, Wilmington, Delaware. Counsel for Defendant.

MEMORANDUM OPINION

Dated: March 24, 2004
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Plaintiff Maureen Richards filed this action on January 22, 2003 against defendants DaRon Mearlon ("Mearlon") and the City of Wilmington (the "City"). (D.I. 1) Plaintiff alleges sexual harassment and retaliation pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) et seq. ("Title VII"), and 19 Del. C. § 711.[1] On April 21, 2003, a stipulation of dismissal was filed dismissing Mearlon with prejudice. (D.I. 10) Currently before the court is the City's motion for summary judgment. (D.I. 39) The court has jurisdiction over plaintiff's claims pursuant to 28 U.S.C. § 1331. For the following reasons, defendant's motion is granted in part and denied in part.

II. BACKGROUND

Plaintiff began working as an account clerk in the Finance Department for the City in 1997. (D.I. 1) Her daily duties included preparing the bank deposits and assisting customers with their inquiries. (D.I. 42 at A-348) In 1998, Mearlon also began working in the Finance Department for the City. (Id. at A-347) Plaintiff and Mearlon worked together on the first floor of the City Building.

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[1]Plaintiff concedes in her answering brief to the instant motion that her claim for retaliation pursuant to 19 Del. C. § 711, her state law claim for intentional infliction of emotional distress, and her claim for punitive damages should be dismissed.

Plaintiff claims that Mearlon started to sexually harass her after meeting her on his first day. (D.I. 42 at A-350) She alleges that Mearlon continued this harassment for the next three years. Throughout this time period, plaintiff occasionally asked her co-workers or friends to tell Mearlon to stop bothering her. After receiving these requests, Mearlon initially left plaintiff alone, but eventually resumed his prior behavior. (Id. at A-353)

In July 1999, plaintiff complained about Mearlon to her supervisor, Shayne Williams ("Williams"). Plaintiff said that Mearlon stared at her, expressed a desire to touch her private parts, and called her constantly at her desk. (D.I. 41 at A-354) Plaintiff believed that her conversation with Williams constituted a formal notice of the sexual harassment because Williams was a supervisor. (Id.) Williams spoke to Mearlon about his conduct. After this discussion, he stopped engaging in such behavior with respect to plaintiff. However, he resumed his actions after a few weeks. (Id.)

In December 1999, plaintiff again complained of Mearlon's conduct to the former Director of Personnel, Mary Dees ("Dees").[2] (Id.) Plaintiff told Dees that Mearlon said that he would not leave her alone and that he made sexual comments to her. She also explained that Mearlon said that she reminded him of his ex-wife. (Id.) In response, Dees informed plaintiff that she would

[2]Ironically, Dees is Mearlon's sister. (Id. at A-355)

speak to Mearlon. (Id. at A-356) Pursuant to this second discussion about his conduct, Mearlon stopped bothering plaintiff for a short period of time. Thereafter, he resumed his prior behavior. (Id. at A-358)

On July 20, 2001, plaintiff filed a written complaint about Mearlon with her manager, Terry Toliver ("Toliver"). (D.I. 42 at A-232-236) In her complaint, plaintiff alleged that Mearlon repeatedly said that she looked liked his ex-wife and that "faith [sic] had brought them together" because both she and his ex-wife were from the islands. (Id.) Plaintiff also claimed that Mearlon "talk[ed] dirty" to her and told her that he was never going to leave her alone. (Id.) Additionally, plaintiff claimed that Mearlon professed his love for her and told her that he was going to take her to Texas where she would never get away from him. (Id.) Apart from his verbal comments, plaintiff explained that Mearlon stared at her while she worked and called her early in the mornings to ask her what she was wearing and late at night to hear her voice before going to sleep. (Id.) Plaintiff also documented that Mearlon had given her a letter enumerating the reasons why he believed that she loved him and the reasons why he believed she did not love him. (D.I. 41 at A-237) Because plaintiff stopped answering the phone when Mearlon called, she asserted that he called her sister to inquire about her whereabouts. (D.I. 41 at A-237) She further asserted that

Mearlon drove to her house on one occasion and waited outside for her to emerge. (D.I. 41 at A-232 to 236) When she did, she immediately got into her car and departed. (Id.) She maintained that Mearlon followed her until she was able to lose him on the road. (Id.) Toliver told plaintiff that she should file a complaint with the police department regarding Mearlon's conduct outside of the workplace.[3] (Id. at A-225, A-230)

In response to plaintiff's complaint, Elinza Cain ("Cain"), the Employee Relations Advisor for the City, investigated Mearlon's conduct within the workplace. (Id. at A-288) Cain substantiated plaintiff's complaint and concluded that Mearlon's actions were offensive. (Id. at A-293) Cain recommended that plaintiff and Mearlon discontinue working in the same area. Additionally, the City issued a written citation to Mearlon and ordered him to attend training about appropriate interaction between friends/co-workers on and off the job. (Id. at A-217)

Subsequent to this investigation, plaintiff asked to be reassigned to a position away from Mearlon. (D.I. 46 at B-90) The City informed plaintiff that only one such opening was available and that it was for a position lower than the one she

[3]Plaintiff filed a complaint with the police on September 21, 2001. (Id. at A-227-A-231) Mearlon was subsequently arrested and charged with stalking and sexual harassment. (Id.) On October 10, 2001, the police issued a "no-contact" order against Mearlon due to criminal charges pending against him. (D.I. 41 at A-231) The order mandated that Mearlon have no contact, direct or indirect, with plaintiff.

currently held. (Id.) The City also informed plaintiff that her salary would remain the same in the lower level position, but that her pension benefits would be negatively impacted. (Id.) Plaintiff chose not to accept the opening.

On September 21, 2001, plaintiff began a medical leave of absence due to her problems with Mearlon. She returned to her position in the Finance Department on April 22, 2002. (D.I. 41 at A-300) At that time, she was informed that Mearlon had been transferred from the Finance Department to a vacant position in the Department of Real Estate and Housing. (Id. at A-221) On April 26, 2002, Mearlon was transferred back into the Finance Department. He was located, however, in a different building from where plaintiff worked. (Id. at A-222)

Following her medical leave, plaintiff alleges that her co-workers harassed her in retaliation for filing charges against Mearlon. (Id. at A-300) She filed a complaint with Monica Gonzales-Gillespie ("Gillespie"), Director of Personnel, as a result of this treatment. (D.I. 41 at A-304) In her complaint, plaintiff asserted that her co-workers excluded her professionally and socially during the workday. (Id.) She likewise claimed they often discussed Mearlon in her presence, even asking her directly why she chose to file charges against him. (Id.) Additionally, plaintiff avers that she frequently found business cards of mental health professionals on her desk.

(D.I. 1) Pursuant to her complaint about her co-workers, the City distributed a copy of the sexual harassment policy to all employees in the Finance Department at a quarterly staff meeting and reminded employees that no repercussions should occur if harassment is reported. (D.I. 41 at 305-A-306). Since this meeting, plaintiff made no additional complaints about her co-workers.

III. STANDARD OF REVIEW

A court shall grant summary judgment only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden of proving that no genuine issue of material fact exists. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Fed. Kemper Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted). If the moving party has demonstrated an absence of material fact, the nonmoving party then "must come forward with 'specific facts showing that there is a genuine

issue for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The court will "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pa. Coal Ass'n v. Babbitt, 63 F.3d 231, 236 (3d Cir. 1995). The mere existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, then the moving party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

IV. DISCUSSION

A. Sexual Harassment Claim Based on A Hostile Work Environment

Plaintiff alleges that she was subject to sexual harassment in violation of Title VII of the Civil Rights Act of 1964. The sexual harassment section of Title VII provides in pertinent part that it is unlawful for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42

U.S.C.A. § 2000e-2(a)(1) (2004). A plaintiff who claims that she has been sexually harassed has a cause of action under Title VII if the unwelcome sexual conduct was either a *quid pro quo* arrangement or if the harassment was so pervasive that it had the effect of creating an intimidating, hostile, or offensive work environment. See Meritor Sav. Bank v. Vinson, 477 U.S. 57, 66 (1986); see also Kunin v. Sears Roebuck and Co., 175 F.3d 289, 293 (3d Cir. 1999) (stating that it is well established that a plaintiff can prove a violation of Title VII by establishing that sexual harassment created a hostile or abusive work environment).

To qualify under the hostile work environment category, the conduct in question must be severe or pervasive enough to create both an "objectively hostile or abusive work environment - an environment that a reasonable person would find hostile," and an environment that the victim-employee subjectively perceives as abusive or hostile. See Harris v. Forklift Sys., Inc., 510 U.S. 17, 21-22 (1993); see also Faragher v. City of Boca Raton, 524 U.S. 775, 783 (1998); Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 752 (1998). In other words, a plaintiff must prove five elements to fall within the purview of Title VII due to a hostile work environment: (1) she suffered intentional discrimination because of her sex; (2) the discrimination was pervasive and regular; (3) she was detrimentally affected by the discrimination; (4) the discrimination would detrimentally affect

a reasonable person of the same sex in the same position; and (5) respondeat superior liability exists. See Andrews v. City of Philadelphia, 895 F.2d 1469, 1482 (3d Cir. 1990); see also Weston v. Pennsylvania, 251 F.3d 420, 426 (3d Cir. 2001). The court must examine the totality of the circumstances in deciding a hostile work environment claim, including: "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; whether it unreasonably interferes with an employee's work performance." Harris, 510 U.S. at 23.

With regard to employer liability for sexual harassment, the Supreme Court has distinguished the principles applicable to harassment by co-workers versus the principles applicable to harassment by supervisors. See Faragher, 524 U.S. at 803. Specifically, the Supreme Court has noted that in the instance of co-worker sexual harassment, the standard for employer liability is negligence. See id. at 799. The Supreme Court has defined negligence with respect to sexual harassment as whether the employer knew or should have known about the conduct and failed to stop it. See Ellerth, 524 U.S. at 759 (1998); see also 29 C.F.R. § 1604.11(d) (2004).

Viewing the underlying facts at bar and all reasonable inferences therefrom in the light most favorable to plaintiff, the court finds that genuine issues of material fact exist as to

the five elements requisite to a claim for sexual harassment based on a hostile work environment for a limited time period. Prior to July 1999, when plaintiff first complained about Mearlon to her supervisor, plaintiff points to no evidence of sexual harassment so "severe or pervasive" that the City necessarily knew or should have known about Mearlon's conduct. Absent such actual or constructive notice, the City cannot be held liable for Mearlon's behavior from his start date through July 1999. Additionally, after plaintiff returned from her medical leave of absence on September 21, 2001, plaintiff fails to bring forth any concrete evidence to suggest that Mearlon contacted or bothered her in any way. From July 1999 to September 21, 2001, however, the court finds that the present record is susceptible to differing interpretations regarding the existence of a hostile work environment. The court concludes that there are genuine issues of material fact as to the sufficiency of plaintiff's notice to the City and its response thereto, as well as to the frequency of Mearlon's conduct, its severity, whether it was physically threatening or humiliating, and whether it unreasonably interfered with plaintiff's work performance. Mere "offhand comments and isolated incidents" are not sufficient to set forth a claim for a hostile work environment. See Faragher, 524 U.S. at 786. Consequently, the court denies the City's

motion for summary judgment as to plaintiff's hostile work environment claim for the twenty-seven months defined herein.

B. Retaliation Claim

Plaintiff alleges that she was subject to retaliation in violation of Title VII of the Civil Rights Act of 1964. The anti-retaliation section of Title VII provides in pertinent part:

> It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment . . . because she has opposed any practice made an unlawful employment practice by this subchapter, or because she has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

42 U.S.C. § 2000e-3(a)(as amended 1991). To establish a prima facie case of retaliation under Title VII, a plaintiff must first prove: (1) that she engaged in a protected activity; (2) that her employer took adverse action against her either after, or contemporaneously with, her protected activity; and (3) that there is a causal connection between the protected activity and the employer's adverse action. Woodson v. Scott Paper Co., 109 F.3d 913, 920 (3d Cir. 1997). "To show the requisite causal link, the plaintiff must present evidence sufficient to raise the inference that her protected activity was the likely reason for the adverse action." Ferguson v. E.I. DuPont de Nemours and Co., 520 F. Supp 1172, 1200 (D. Del. 1983). Once the plaintiff succeeds in establishing her prima facie case, the burden of production shifts to the defendant to "articulate some

legitimate, nondiscriminatory reason" for its actions. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). If the defendant is able to successfully articulate such a reason, then the burden shifts back to the plaintiff to show that the defendant's non-discriminatory reason for the termination was pretextual, and that the real reason for the termination was unlawful discrimination. Id. at 802-804. The plaintiff's "ultimate burden in a retaliation case is to convince the factfinder that retaliatory intent had a 'determinative effect' on the employer's decision." Shaner v. Synthes (USA), 204 F.3d 494, 501 (3d Cir. 2000).

In the case at bar, the court need not engage in an extensive burden-shifting analysis because plaintiff has not presented facts sufficient to state a prima facie retaliation claim. The court finds that plaintiff has failed to meet the second element of the prima facie case of retaliation, namely, that the City took adverse employment action against plaintiff. The Third Circuit has defined an "adverse employment action" as an action that "alters the employee's compensation, terms, conditions, or privileges of employment." See Calloway v. E.I. DuPont De Nemours and Co., 2000 WL 1251909 *8 (D. Del. 2000). Plaintiff was not demoted or in any way reprimanded as a result of her multiple complaints against Mearlon. Likewise, she returned to the same position that she held when the alleged

misconduct occurred after she returned from her medical leave of absence. The City did not alter her compensation, terms, conditions or privileges of employment in any way at any time during the course of her employment. Rather, the City investigated plaintiff's complaint, substantiated her allegations, and took corrective actions against Mearlon. Additionally, after learning about her co-workers' actions following her leave, the City admonished the department during a quarterly staff meeting. Since plaintiff cannot establish the second element requisite to a retaliation claim, the court need not consider the remaining two elements. The court, therefore, concludes that plaintiff fails to state a cause of action for retaliation under Title VII and grants the City's motion for summary judgment as to this claim.

V. CONCLUSION

For the reasons stated, the City's motion for summary judgment is denied as to plaintiff's sexual harassment claim for the period of time from July 1999 through September 21, 2001 and granted as to plaintiff's retaliation claim. An appropriate order shall issue.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

MAUREEN RICHARDS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 03-106-SLR
	)	
THE CITY OF WILMINGTON,	)	
	)	
	)	
Defendant.	)	

O R D E R

At Wilmington, this 24th day of March, 2004, consistent with the memorandum opinion issued this same day;

IT IS ORDERED:

1. Defendant's motion for summary judgment (D.I. 39) regarding plaintiff's sexual harassment claim is denied.

2. Defendant's motion for summary judgment (D.I. 39) regarding plaintiff's retaliation claim is granted.

Sue L. Robinson
United States District Judge